



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

May 14, 1948

Hon. Geo. H. Sheppard  
Comptroller of Public Accounts  
Austin, Texas

Opinion No. V-577

Re: Use of funds given  
by Federal Govern-  
ment to State De-  
partment of Health  
for matching pur-  
poses under Em-  
ployees Retirement  
System Act.

Dear Sir:

Your request for an opinion is as follows:

"The question has arisen in this department as to whether the Federal funds granted to the Health Department from which salaries may be paid shall be used for matching the State's contribution for such employees to the Retirement System. I shall, therefore, thank you to advise this department whether such Federal funds shall be transferred by the Comptroller to the Retirement System funds as provided for under the Retirement Act. If your answer is in the negative, that is, that such funds cannot be transferred for the benefits of the Retirement System, from what source or fund shall the matching contributions be provided?"

We are advised orally by a member of your office that "the Federal funds granted to the Health Department from which salaries may be paid" refers to the money given to the State Department of Health by the Federal Government in accordance with the provisions of 42 U.S.C.A., Sec. 246, after certain conditions and budgetary requirements have been met by the Health Department to the satisfaction of the Surgeon General of the United States. The funds granted the State by the Federal Government through the Surgeon General are to be

used in carrying out the broad objectives of venereal disease, tuberculosis, and mental disease prevention and cure and coping with special health problems under the provisions of the Public Health and Welfare laws of the National Government. The Surgeon General is authorized to withhold further payments to the State upon a finding that the State's health authority has failed to comply substantially with either the provisions of Sec. 246, budgetary plans submitted by the State and approved by the Surgeon General, or "the regulations".

"Department", "Employee", and "Employer" are defined in H. B. 168, 50th Legislature, which is codified as Art. 6228a, V. C. S., as follows:

"Section 1 . . .

"B. 'Department' shall mean any department, commission, institution, or agency of the State Government.

"C. 'Employee' shall mean any regularly appointed officer or employee in a department of the State . . .

"D. 'Employer' shall mean the State of Texas."

Sec. 8.A. of said H. B. 168, provides, in part, as follows:

"The amount contributed by each member to the Retirement System shall be five per cent (5%) of the regular annual compensation paid to each member. The amount contributed by the State of Texas to the Retirement System shall not exceed during any one (1) year five per cent (5%) of salaries of all members, disregarding salaries in amounts in excess of Three Thousand Six Hundred Dollars (\$3,600), provided the total amount contributed by the State during any one (1) year shall at least equal the total amount contributed during the same year by all members of the Retirement System; provided further that all contributions made by the State shall be from and charged to the respective funds appropriated, allocated and provided to pay the

salary or compensation of the employee for whose benefit the contribution is made. . ." (Emphasis ours)

Sec. 8.B. 2.a. of said H. B. 168, provides, in part, as follows:

"a. From and after the date of the establishment of the membership and full operation of the Retirement System created by this Act takes effect, there is hereby allocated and appropriated to the Employees Retirement System of Texas, in accordance with this Act, from the several funds from which the employees benefited by this Act receive their respective salaries, a sum equal to five per cent (5%) of the total compensation paid to the said respective employees who are members of said Retirement System and whose compensation is paid from funds directly controlled by the State. The State Board of Trustees (meaning the board of seven members responsible for the operation of the Retirement System) shall certify to the State Comptroller of Public Accounts and the State Treasurer at the end of each month the total amount of compensation paid such member of the Retirement System, and the State Comptroller shall thereupon transfer five per cent (5%) of this amount from the said respective funds from which said employees are paid to the State Employees Retirement Fund; . . ." (Emphasis ours)

We are informed further by a Health Department representative that the question of the use of Federal funds for matching purposes under the Retirement Act was submitted to the Surgeon General and this use was approved. This being the case, the Federal funds, once deposited to the State's account or in the State Treasury under the terms of the Public Health laws of the United States, become state funds for all purposes and intents, and are appropriated by the Legislature in accordance with the budget submitted by the Health Department to and approved by the Surgeon General. These funds are earmarked for public health uses, yet they are State property as title has passed by gift from the Fed-

eral Government to the State. They are funds under control of and subject to appropriation by the Texas Legislature for the payment of salaries of Health Department employees as well as fulfilling the other objects outlined in the Health Department budget approved by the Surgeon General. We believe they are State funds within the purview of the underlined portions of the Retirement Act and may be utilized for matching purposes under the terms of this Act.

The source of the funds out of which an individual is paid is not controlling. It is the fact that the Department of Health is charged with the responsibility of paying an individual's salary and that the employee falls within the definition of "employee" given in the Retirement Act plus the fact that the Federally-donated funds are State-owned property and subject to direct control of and appropriation by the Legislature. They are within the ambit of the Comptroller's authority to transfer a portion thereof (5%) to the Employees Retirement Fund.

SUMMARY

Funds given to the State Department of Health by the Federal Government under the Public Health and Welfare laws of the United States, 42 U.S.C.A., Sec. 246, may be utilized for matching purposes by the Comptroller of Public Accounts under the terms of the State Employees Retirement Act. Art. 6228a, V. C. S.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By

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JTB:mv

APPROVED:

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